99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-583

COMPLETED

KENNETH DAVID FRANKLIN

MAY 7, 1986.—Referred to the Committee of the Whole House and ordered to be printed

Mr. GLICKMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2505]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2505) for the relief of Kenneth David Franklin, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

"SECTION 1. WAIVER OF EMPLOYEE STATUS REQUIREMENT FOR DEPOSIT OF RETIREMENT CONTRIBUTIONS.

"Notwithstanding the requirement of section 8334(d) of title 5, United States Code, relating to status as an employee, Kenneth David Franklin of Raleigh, North Carolina, or his spouse, may make a deposit under such section.

"SEC. 2. WAIVER OF TIME LIMITATION FOR CLAIMING DISABILITY RETIREMENT BENEFITS.

"Notwithstanding the time limitation of section 8337(b) of title 5, United States Code, on filing a claim for disability retirement benefits, Kenneth David Franklin may file a claim, after making the deposit allowed in section 1, for disability retirement benefits under subchapter III of chapter 83 of such title."

PURPOSE

As amended, the bill would allow Mr. Franklin or his wife to redeposit the retirement contribution he withdrew upon leaving Federal employment. It would also waive the time limitations of section 8337(b) of title 5, United States Code, concerning filing of claims for disability retirement and permit Mr. Franklin to file such a claim and have it considered under otherwise applicable law.

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STATEMENT

Mr. Franklin is a former employee of the Drug Enforcement Administration who has suffered from a degenerative neuromuscular disease since childhood. In 1980 he notified his personnel office that he wished to apply for disability retirement and requested the necessary application forms. He was told that he could not apply for disability benefits because his disability condition "pre-existed" his Federal employment. Mr. Franklin resigned on February 2, 1980, and subsequently received a refund of his Civil Service Retirement contributions. About two years later, Mr. Franklin learned that he had been misadvised and that the Civil Service Retirement law simply requires an individual to have become disabled while Federally employed in order to qualify for disability retirement. The fact that his disease began many years ago is irrelevant, as long as it did not become disabling until after his Federal employment began. Upon learning that he had been given erroneous advice, Mr. Franklin submitted an application for disability retirement, which was rejected because it was not filed within one year after he resigned, as required by 5 U.S.C. 8337(b).

Mr. Franklin has exhausted all his appeal rights, and his case is not in litigation. His only recourse is an appeal to the Congress. The Office of Personnel Management lacks authority to waive the statutory requirement that a disability retirement application must be filed within one year after the individual leaves Federal employment. Accordingly, as the report from the Office of Personnel Management states, despite Mr. Franklin's efforts to file a timely claim, it cannot now grant relief by administrative action.

The Committee amendment would revise the bill to conform the bill to the recommendations of the Department of Justice and the Office of Personnel Management. As introduced, the bill would have deemed Mr. Franklin eligible for disability retirement benefits. The Office of Personnel Management took the position that no applicant for disability retirement benefits should receive a disability annuity pursuant to 5 U.S.C. § 8337 unless OPM determines that the applicant meets the criteria for disability retirement established by section 8337. The amended bill would permit such a determination.

OPM recommended that the provisions of the bill should waive the one year filing deadline and allow Mr. Franklin or his wife to redeposit his retirement contributions. OPM has the authority to determine whether or not an individual has become disabled under the Civil Service Retirement law, and the amended bill will permit such a determination in Mr. Franklin's case. Because Mr. Franklin's application was delayed due to the erroneous advice he received, the application itself was never evaluated. OPM pointed out that it is not necessary or appropriate for private relief legislation to provide that he is entitled to disability retirement benefits beginning February 3, 1980. If the one-year filing deadline is waived by legislation, Mr. Franklin would be entitled to an annuity beginning on February 3, 1980, assuming OPM's Disability and Special Entitlements Division find that his application established that he became disabled during his Federal employment. OPM stated that it opposed enactment of H.R. 2505, as introduced, but would not do

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so if it were revised to leave the Office of Personnel Management with the authority to evaluate Mr. Franklin's disability retirement application under the same procedures and criteria that are used for other disability applicants.

In its support of such a revised bill, OPM pointed out that the case is unusual in that there are clear indications not simply that Mr. Franklin's employing agency failed to advise him of the one-year deadline, for filing a disability retirement application, but that Mr. Franklin actually attempted to apply within the one-year period and was counselled against doing so by the agency. Mr. Franklin, in fact, made every reasonable effort to comply with the one year filing deadline. Accordingly, while not in a position to grant relief to Mr. Franklin by administrative action, OPM would not oppose private relief legislation which would allow the Office of Personnel Management to evaluate Mr. Franklin's disability retirement application at this time.

The amended bill implements the recommendations of the Department of Justice and the Office of Personnel Management. It is recommended that the amended bill be considered favorably.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, January 30, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to your request for the views of the Department of Justice on H.R. 2505, a bill for the relief of Kenneth David Franklin.

H.R. 2505, if enacted, would waive the time limit in 5 U.S.C. § 8337(b) for the filing of an application for disability retirement benefits by Mr. Franklin, would deem Mr. Franklin to be entitled to disability retirement benefits, and, after his payment of certain monies,[1] would allow Mr. Franklin to receive a monthly civil service disability retirement annuity and a lump-sum payment equal to the amount of disability he would have received from February 3, 1980, through the date his current monthly disability annuity benefits begin to be paid. The bill would also require the Secretary of the Treasury to pay Mr. Franklin interest at an annual rate of six percent, compounded annually, on the amount of the lump-sum payment.

Mr. Franklin, a former employee of the Drug Enforcement Administration of the Department, was placed in an exceptional situation as a result of erroneous advice given him by his agency, on which he relied to his detriment, concerning his right to apply for disability retirement under the civil service retirement law. In consequence, he resigned from Federal service on January 2, 1980, withdrew his retirement contributions, and failed to file a timely application for disability retirement.

We are advised by the Office of Personnel Management (OPM) that it has no objection to the portions of the bill that would waive

[1] Mr. Franklin received a refund of the monies that were withheld from his salary and were paid to the Civil Service Retirement and Disability Fund (CSRDF). The bill would allow him to redeposit the refund he received, plus interest, in the CSRDF.

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the time limits for the filing by Mr. Franklin of an application for disability retirement benefits or that would allow Mr. Franklin to make a redeposit to the CSRDF, of the refund he received. OPM, however, objects to the portion of the bill that would deem Mr. Franklin eligible for disability retirement benefits. It is OPM's position that no applicant for disability retirement benefits—including Mr. Franklin—should receive a disability annuity pursuant to 5 U.S.C. § 8337 unless OPM determines that the applicant meets the criteria for disability retirement established by section 8337. Inasmuch as OPM administers the civil service retirement program, we defer to OPM's views on part of this bill.

We oppose the portion of the bill that would require the payment of interest on any lump-sum payment made to Mr. Franklin. To do so would place Mr. Franklin in a better position than other individuals who initially are denied retirement benefits by OPM and later, whether through reconsideration by OPM or a decision of the Merit Systems Protection Board or a court, are determined to be entitled to retroactive retirement benefits. In none of those situations is the ultimately successful applicant for retirement benefits entitled to the payment of interest. See, e.g., *Holly* v. *Chasen*, 639 F.2d 795 (D.C. Cir. 1981). We know of no reason why Mr. Franklin should be granted more favorable treatment than other similarly situated individuals.

In summary, the Department of Justice recommends against enactment of this bill in its present form, but would recommend in favor of legislation that would waive the time limits for the filing of Mr. Franklin's application for disability retirement and that would allow him to redeposit in the CSRDF the refund he received, plus interest.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
OFFICE OF THE DIRECTOR,
Washington, DC, December 27, 1985.

Hon. PETER W. RODINO, Jr.,
Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Office of Personnel Management on H.R. 2505, a bill "For the relief of Kenneth David Franklin."

Mr. Franklin, a former employee of the Drug Enforcement Administration, has suffered from a degenerative neuromuscular disease since childhood. In 1980 he informed his personnel office that he wished to apply for disability retirement and requested the necessary application forms. We understand that he was told that he could not qualify for disability benefits because his disability condition "preexisted" his Federal employment. Mr. Franklin resigned on February 2, 1980, and subsequently received a refund of his Civil Service Retirement contributions. Approximately two years

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later, Mr. Franklin learned that he had been misadvised and that the Civil Service Retirement law simply requires an individual to have become disabled while Federally employed in order to qualify for disability retirement. The fact that his disease began many years ago is irrelevant, as long as it did not become disabling until after his Federal employment began. Upon learning that he had been given erroneous advice, Mr. Franklin submitted an application for disability retirement, which was rejected because it was not filed within one year after he resigned, as required by 5 U.S.C. 8337(b).

Mr. Franklin has exhausted all his appeal rights, and his case is now in litigation. The Office of Personnel Management lacks authority to waive the statutory requirement that a disability retirement application must be filed within one year after the individual leaves Federal employment.

H.R. 2505 would allow Mr. Franklin or his wife to redeposit the retirement contributions he withdrew upon leaving Federal employment, notwithstanding the requirement in 5 U.S.C. 8334(d) that only current employees may make redeposits. The bill would also provide Mr. Franklin with a disability annuity, beginning February 3, 1980, including 6 percent annual interest on the amount payable to Mr. Franklin before the date of enactment.

Ordinarily, we would object to private relief legislation granting one person benefits to which others similarly situated would not be entitled. However, it appears to us that this case is unusual in that there are clear indications not simply that Mr. Franklin's employing agency failed to advise him of the one-year deadline for filing a disability retirement application, but that Mr. Franklin actually attempted to apply within the one-year period and was counselled against doing so by the agency. Mr. Franklin, in fact, made every reasonable effort to comply with the one-year filing deadline. Because we are not in a position to grant relief to Mr. Franklin by administrative action, we would not oppose private relief legislation which would allow the Office of Personnel Management to evaluate Mr. Franklin's disability retirement application at this time.

However, we do not believe H.R. 2505 should go beyond waiving the one-year filing deadline and allowing Mr. Franklin or his wife to redeposit his retirement contributions. We believe the authority to determine whether or not an individual has become disabled under the Civil Service retirement law should rest with the Office of Personnel Management, and there has not been such a determination in Mr. Franklin's case. Because Mr. Franklin's application was untimely, the application itself was never evaluated. Therefore, it is not necessary or appropriate for private relief legislation to provide that he is entitled to disability retirement benefits, beginning February 3, 1980. If the one-year filing deadline is waived by legislation, Mr. Franklin would be entitled to an annuity beginning on February 3, 1980, assuming our Disability and Special Entitlements Division finds that his application establishes that he became disabled during his Federal employment. Thus, we oppose enactment of H.R. 2505, but would not do so if it were revised to leave the Office of Personnel Management with the authority to evaluate Mr. Franklin's disabilty retirement application under the

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same procedures and criteria that are used for other disability applicants.

We must also object to the provision granting 6 percent interest on retroactive annuity payments. The retirement law does not permit such interest payments on any other retroactive payments, and I do not believe that the situation in this case warrants this unprecedented benefit.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

CONSTANCE HORNER,
Director.

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